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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC PIEPER,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-0705-CR-263

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0605-CM-96737

October 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Eric Pieper appeals his conviction for Operating a Vehicle While Intoxicated, as a Class A misdemeanor, following a bench trial. He presents a single issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

During the evening of May 26, 2006, Constance Hindman, an off-duty sergeant with the Butler University Police Department, was driving her personal vehicle near the intersection of 38th Street and Lafayette Road when the driver of a Chevy Avalanche, later identified as Pieper,¹ ran a red light and turned onto 38th Street. Pieper's truck almost struck Sergeant Hindman's vehicle before proceeding westbound on 38th Street. Sergeant Hindman followed Pieper's truck and observed that he was driving at a high rate of speed and almost struck several cars. Sergeant Hindman contacted an officer with the Indianapolis Police Department to report Pieper, and she continued to follow him. Pieper was driving erratically, but finally stopped in front of a pub located in a strip mall.

Sergeant Hindman parked her vehicle approximately fifteen feet away from Pieper and watched him get out of the truck. She observed that there were no passengers in Pieper's truck. After Pieper got out, he fell to the ground, pulled himself up, and walked to the front of his truck. The front bumper was loose, and Pieper kicked at it. Several people came out of the pub at that point and began talking to Pieper. After a short time, Pieper got back into his truck and drove away, and Sergeant Hindman followed him.

¹ The Chevy Avalanche is registered to Pieper.

Pieper continued to drive erratically. He almost struck a green Cadillac, in which several of the people he had talked to outside the pub earlier were riding. Pieper ultimately returned to the pub, parked his truck, and entered the pub. At that point, an IPD officer had arrived, and he and Sergeant Hindman followed Pieper into the pub. Pieper walked through the pub and exited out the back door. The green Cadillac in which Pieper's friends had been traveling was parked in the alley, and Pieper got in. As the driver of that car began to drive away, Sergeant Hindman chased the car on foot. Other Indianapolis Police Department officers initiated a traffic stop of that car. Sergeant Hindman identified Pieper as the driver of the Chevy Avalanche, and he failed several field sobriety tests.

The State charged Pieper with operating a vehicle while intoxicated ("OVWI"), as a Class A misdemeanor, and public intoxication, as a Class B misdemeanor. Following a bench trial, the trial court found Pieper guilty as charged, but entered judgment of conviction only on the OVWI count. This appeal ensued.

DISCUSSION AND DECISION

Pieper contends that the State presented insufficient evidence to support his conviction. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Pieper's sole contention on appeal is that the evidence identifying him as the driver of the Chevy Avalanche was insufficient to support his conviction. In particular, Pieper asserts that Sergeant Hindman's identification of him as the driver was unreliable² and that the bulk of the evidence shows that he was not driving the Avalanche. Pieper argues that Sergeant Hindman did not get a good look at him at any time prior to his arrest. And he points out that his friend Ernie Dodson testified at trial that he was the person driving the Avalanche that night.

But Sergeant Hindman testified that she observed Pieper getting into and out of the Chevy Avalanche at various times during the night of May 26, 2006. Her unequivocal identification of Pieper as the driver of that vehicle is evident in the following colloquy:

Q: And did you observe the defendant behind the wheel of the vehicle?

A: Yes sir.

Q: Did you observe the defendant behind the wheel of the vehicle while he was driving away from the pub?

A: Yes sir.

Transcript at 12. When Sergeant Hindman first saw Pieper exit the Avalanche, she was only fifteen feet away from him. She was able to observe his clothing and general appearance. Sergeant Hindman followed Pieper for a significant period of time. When police officers finally initiated a traffic stop, Sergeant Hindman identified Pieper as the driver of the Avalanche.

² In support of that contention, Pieper cites to Jones v. State, 749 N.E.2d 575 (Ind. Ct. App. 2001), trans. denied. But that case sets out criteria for evaluating a witness' in-court identification testimony after that witness has participated in an improper pretrial identification procedure. Such is not the case here, so Jones is inapposite.

Pieper's contentions on appeal amount to a request that we reweigh the evidence, which we will not do. We reject Pieper's assertion that Sergeant Hindman's testimony is unreliable. The trial court found her credible, and we will not second-guess that determination. The State presented sufficient evidence to support Pieper's conviction.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.